

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN KEITH BALES**, on February 5, 2003 at 3 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Keith Bales, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Ken (Kim) Hansen (D)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Sam Kitzenberg (R)

Members Absent: None.

Staff Present: Jennifer Stephens, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 266, 1/25/2003
Executive Action:

HEARING ON SB 266

Sponsor: SEN. JOHN COBB, SD 25, AUGUSTA

Proponents: Jim Barngrover, Alternative Energy Resources
Organization (AERO)
Russ Wahl, Farmer, Cutbank
Clifford Bradley
Dan Andrews, Farmer, Power County
Sen. John Tester, SD 45, Big Sandy
Bob Quinn, Grain Marketer, Big Sandy
Andre Giles, Owner and President, Montana Flour
and Grain
Ralph Paulus, Farmer, Teton County
David Oien, Timeless Seeds
Wade Sikoski, Farmer, Fallon County
Leo Somerfeld, Farmer, Power County
Chris Christiaens, Montana Farmers Union
Betty Whiting, Montana Association of Churches
Kathy Huber, Student, University of Montana
Erin Foley, Student, University of Montana
Christine Kelly, Student, University of Montana
Steve Craig, Farmer, Choteau County
Kathy Craig, Farmer, Choteau County
Jonda Crosby, Farmer, Helena Valley

Opponents: John Stoner, Montana Grain Growers Association
John Youngberg, Montana Farm Bureau
Ron Ueland, Western Plant Breeders, (WPB)
Keith Schott, Tresurer, Montana Grain Growers
Arleen Rice, President, Montana Agri-Business
Association (MABA)
Pam Langley, Montana Agri-Business Association,
Montana Seed Trade

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, AUGUSTA, said the intent of SB 266 is to hold patent holders responsible for damages due to contamination of Montana conventional wheat varieties from genetically modified wheat varieties. Contamination would include drift, cross-pollination, commingling in an elevator, etc. The bill reimburses Montana farmers and grain handlers for actual loss of market values suffered as a result of contamination from

genetically modified wheat varieties. He explained the bill would demand a cash bond of \$10 million up front on the patent owner of a genetically modified wheat variety introduced in Montana for commercial production. He also mentioned there are technical amendments that would have to be added to the bill. The fiscal note showed some technical concerns that he assured would be fixed before the bill left the committee. He said the main points of the bill were on page 3, section 3. Also, the bill does not hamper any experiments or non-commercial production so companies can do testing. The bond continues for an extent of five years after the production of the genetically modified wheat ends. Section 8, 9, and 10 of the bill describes the claim eligibility, how to file a suit, and also how the board is supposed to function. **SEN. COBB** further explained that Monsanto is working on a genetically modified wheat variety and may produce commercially within the next two years. He asserted there is nothing wrong with Monsanto coming out with the wheat, however many countries don't want to buy it. That is why he thinks it is important that farmers be compensated if they can't sell their wheat due to contamination from genetically modified wheat. Without the bill, he explained, neighbor would be fighting neighbor. He ended by saying SB 266 was a simple mechanism to pay for the loss or damage that may be caused by wheat contamination. He also asserted that SB 266 is better than completely banning genetically modified wheat in Montana.

Proponents' Testimony:

Jim Barngrover, Alternative Energy Resources Organization (AERO), submitted written testimony, **EXHIBIT(ags25a01)**. He also mentioned that **Brooks Dailey** from the **Montana Farm Bureau** was unable to attend the hearing but wanted to go on record as supporting SB 266.

Russ Wahl, Cutbank, submitted written testimony, **EXHIBIT(ags25a02)**.

Clifford Bradley, submitted written testimony, **EXHIBIT(ags25a03)**.

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Dan Andrews, Power, submitted written testimony, **EXHIBIT(ags25a04)**.

Sen. John Tester, SD 45, Big Sandy, explained there are two institutions that if, lost, the US would never be the same. He said the two institutions are public education and the family farm unit. He thinks SB 266 will preserve the family farm unit because it creates a bond that will protect wheat farmers. He

asked the committee to protect the number 1 industry in Montana by supporting SB 266.

Bob Quinn, Grain Marketer, Big Sandy, submitted written testimony, **EXHIBIT(ags25a05)**.

Andre Giles, Owner and President, Montana Flour and Grain, gave information concerning his business and explained he annually purchases wheat from approximately 60 family farms in Montana, paying a premium of 30 to 50 cents for non-organic grain and up to \$1.50 to \$4 for organic grains. About 25% of the volume is non-organic grain and 75% organic. His product is sold all over the US as well as in other countries. He explained that not only is genetically modified wheat not wanted in other countries, his two biggest buyers in Montana also don't want genetically modified wheat, making this controversy a domestic issue as well. He explained that he has signed contracts stating he would not sell genetically modified wheat. **Mr. Giles** explained that contamination in his workplace could happen in two ways. First, because he contracts in the spring for wheat that is not yet grown, if that wheat is contaminated, he will not be able to use it in his facility. Also, if he unknowingly takes grain that is contaminated and mixes it with clean grain, the whole mix cannot be accepted. He explained that many wheat buyers would reject a shipment even if it was only half of one percent contaminated with genetically modified wheat. In dollar terms, a thousand bushel load of organic wheat is worth approximately \$8,000. If that was contaminated with genetically modified wheat, it could be worth \$3,000, a \$5,000 loss. If that load is milled into flour, it's worth about \$15,000 to \$16,000. If genetic modification is discovered in that milled wheat, he can expect a bigger loss. If that milled wheat is then sent out to bakeries and gets into wheat products, such as graham crackers or tortillas, with the packaging costs plus the costs of other ingredients, that same 1,000 bushels of wheat could bring a lawsuit of up to \$100,000 if it is found to be genetically modified. Because of this possibilities, he explained the financial risks would put his business in jeopardy if there was no one who could compensate him for his loss. He asked the committee to support SB 266 because that would insure he would be compensated for any losses due to contamination of his wheat.

Ralph Paulus, Farmer, Teton County, submitted written testimony, **EXHIBIT(ags25a06)**. He also submitted the written testimony of **Chris Stephens, Farmer, Dutton, EXHIBIT(ags25a07)**.

David Oien, Timeless Seeds, submitted written testimony, **EXHIBIT(ags25a08)**. He also submitted the written testimony of **Joe Suzuki, Director, Pasta Montana, EXHIBIT(ags25a09)**.

Wade Sikoski, Farmer, Fallon County, submitted written testimony, **EXHIBIT**(ags25a10). He also submitted the written testimony of **Dan McGuire, Chairman, American Corn Growers Association**, **EXHIBIT**(ags25a11).

Leo Somerfeld, Farmer, Power County, said that if his seed was contaminated by genetically modified wheat, he would lose a lot of money. He also thinks the \$10 million bond is too low and should be raised to \$100 million because the companies producing the seeds are very large.

Chris Christiaens, Montana Farmers Union, submitted written testimony, **EXHIBIT**(ags25a12).

Betty Whiting, Montana Association of Churches, stated that she believes that all of us are called by God to responsible in our creation. She described a scenario in Ukraine where genes from genetically modified oil seed contaminated conventional crops as far away as 200 yards. She also said that the genetically modified oil weed readily interbred with a weed, giving it resistance to herbicides and thus raising the prospect of the development of super weeds. She thinks that the five year liability stated in the bill might be too short of a time. She urged the committee to support SB 266.

Kathy Huber, Student, University of Montana; Erin Foley, Student, University of Montana; Christine Kelly, Student, University of Montana, said they were concerned about the introduction of genetically modified wheat into Montana. They brought with them a petition signed by 300 community members who are also in support of the bill, **EXHIBIT**(ags25a13).

Steve Craig, Farmer, Choteau County, said he thinks the state will lose market share. He is also concerned about cross-contamination.

Kathy Craig, Farmer, Choteau County, added her support for the bill.

Jonda Crosby, Helena Valley, handed in a witness statement sheet, **EXHIBIT**(ags25a15).

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Opponents' Testimony:

John Stoner, Montana Grain Growers Association, submitted written testimony, **EXHIBIT(ags25a14)**.

John Youngberg, Montana Farm Bureau, questioned **Leo Somerfeld's** information concerning how far wheat could pollinate other crops. **Mr. Youngberg** submitted testimony that indicated wheat could not cross-pollinate, **EXHIBIT(ags25a16)**. He also assured the committee that the market would drive the introduction of genetically modified wheat. He said he strongly believes that genetically modified wheat will not be planted until there is a market for it; likewise, companies will not produce it until there's a market. He made reference to **Russ Wahl's** concern that the wheat will be mixed in shipping. **Mr. Youngberg** said he didn't know of any grain that is shipped primarily from Montana; it would be contaminated in shipment in the rail cars. He said if law is set forth in Montana that sets the state apart from other states, it won't matter in the least because our grain will still be mingling with other state's grain. He gave support to organic farmers, but asked why organic grain can be separated from non-organic grain without any problems, but not genetically altered grain from non-modified grain. He also disagreed with the premise that one modified wheat company would control the whole market. He said that SB 266 would guarantee a monopoly because not many companies have the financial resources to pay a \$10 million bond. He also made the point that the bond would not allow state universities the opportunity to develop the wheat. Because of the bond, he reasons the only group that could pay the bond would be a large, multinational corporation. He urged the committee one last time to oppose SB 266.

Ron Ueland, Western Plant Breeders (WPB), said that his company cannot afford a \$10 million bond. He explained that he is watching 5 biotech projects that are non-Monsanto related. He thinks there is a likely chance the experiments will be niche markets for Montana in the future or will at least help the commodity grower compete because of higher yields and disease control. He asked what the state will do when the biotech industry develops a variety that has disease management in it and the state is behind on our technology. He also said the bill only deals with companies with patents, so if someone chooses not to patent the wheat, they can get around the mandates of the bill. He also asked who the universities would be able to market there technologies through. With SB 266, a university would never be able to pay a \$10 million bond. He said there are also misrepresentations in the bill, for instance, the bill says "today, the pacific rim does not accept engineered crops". He said that is not true because those countries currently accept genetically modified soybeans, canola, and corn. He also said the wet millers of corn do not recognize the difference between

genetically modified corn and non-modified corn. He said he thinks SJ 8, a resolution to oppose genetically modified commodities, was a good step to create safeguards in the industry and leaves room for continued research. He also believes that the genetically modified wheat deserves the same standards that are given to the organic industry. He also added that a wider variety of wheats would diversify Montana's economy. Lastly he mentioned that if the bond board had to have an organic grower represented, there should also have to be a biotech grower or researcher represented. He also mentioned possible conflicts with trade and interstate commerce.

Keith Schott, Treasurer, Montana Grain Growers, said that the proponents' speak of Round Up Ready Wheat as already existing. He emphasized there is no Round Up Ready Wheat at this time. Furthermore, round up will not release the wheat until a market has been secured and separation methods are in place. He also thinks that universities and small businesses will loose out because of their inability to pay for a bond. He explained that it would also hurt Montana's competitive edge because businesses will go to other states to grow genetically modified wheat. He closed by hypothetically asking what would be done for farmers whose genetically modified wheat was contaminated by non-genetically modified wheat.

Arleen Rice, President, Montana Agri-Business Association, (MABA), submitted written testimony, **EXHIBIT**(ags25a17).

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Pam Langley, Montana Agri-Business Association, Montana Seed Trade, was asked by the Montana Food Distributors Administration to let the committee know that they are opposed to SB 266. She also said that the Montana Grain Elevator Association would have been present if they had concerns about grain elevator contamination; she made the point that they were not present and therefore not concerned. She explained seed companies in the state have a vested interest in research and new agriculture technology. To put up barriers, such as SB 266, would delegate the entire agriculture industry to a sideline position. Montana seed industry is very dependent on a healthy production economy and SB 266 would leave very little room for future niche market opportunities. She also thinks SB 266 would jeopardize Montana jobs. Lastly, she explained that North Dakota had two similar bills and both of them were voted down. She thinks that passing SB 266 would not only have a chilling effect on research, but it would set Montana apart from other states. Also, she asserted if bonding is needed, it should be done on the national level. She

submitted a brochure from Montana State University,
EXHIBIT(ags25a18) and other statistics, **EXHIBIT(ags25a19)**.

Questions from Committee Members and Responses:

SEN. KEN HANSEN asked **Ralph Peck, Director, Montana Department of Agriculture**, his position on SB 266. **Mr. Peck** said he believes the state needs to be very competitive in today's economy in order for agriculture to survive in the US. He also wants to protect producers rights. He further explained that 3 federal agencies have looked at the issue at hand and it is his personal belief that the state needs every tool we can use for producers to survive in the economy, including the right for producers to raise organic products to the right for other producers to choose biotechnology. The balance, he thinks, would be to provide that protection. He said he thinks the state cannot be an island unto ourselves. If Montana is too strict, other states will be glad to produce the products and leave us behind.

SEN. LINDA NELSON asked **SEN. COBB** if there really is a concern to pass SB 266 if no one is ready to plant genetically modified wheat anyways. **SEN. COBB** explained that the company, Monsanto, believes there is going to be a market soon so it is very likely they will be finding contracts soon. He said if genetically modified wheat is going to be a niche market in Montana, then people need to be protected. **SEN. COBB** said the issue is between science and customer choice. He also insisted again there is not a market for genetically modified grain. **SEN. NELSON** wanted to know how **SEN. COBB** felt about the state potentially being behind on technology. **SEN. COBB** said that SB 266 does not stop any research; it just stops commercial production. If farmers are hindered by the bill in the next two years, a bill can be presented in the next legislative session to get rid of it. **SEN. COBB** said he is most concerned with what happens this year and the year after. **SEN. NELSON** asked what other states are doing in terms of genetically modified wheat. **SEN. COBB** said he had heard a lot of things but really doesn't know what other states' are doing. He again assured that SB 266 is a simple bill to insure Montana farmers.

SEN. WALTER MCNUTT asked **SEN. COBB** who we are really afraid of if both the proponents and opponents agree that genetically modified wheat does not have a market at this time. **SEN. COBB** said even if genetically modified wheat is not produced in Montana, SB 266 doesn't hurt anybody; likewise, if it is grown, farmers and producers need to be insured in some way.

SEN. MCNUTT asked **Dan Andrews** how many people he knew that are currently growing genetically modified wheat. **Mr. Andrews** said

he didn't know of anyone who was currently growing genetically modified wheat. He also added that he didn't know what could be considered genetically engineered anymore due to the fact that many grains have been engineered to be hardier than others. He also said he believes, in time, genetically modified wheat will be accepted. He just doesn't know what to do until the markets do fully accept genetically modified grain. **SEN. MCNUTT** rephrased the original question by asking who is raising genetically modified wheat that is affecting our ability to market grain in the Pacific Rim. **Mr. Andrews** said no one is marketing it now, but he still thinks that potential contamination is still a problem.

SEN. JOSEPH TROPILA asked if he could speak with **SEN. COBB** after the hearing in order to get technical information concerning the bill. **SEN. COBB** said that wouldn't be a problem.

SEN. DALE MAHLUM asked **Mr. Wahl** what would happen if one of his neighbors was growing genetically modified wheat and it contaminated his own wheat. Specifically, he wanted to know if he could file a lawsuit outside of any protection he might receive if SB 266 was instated. **Mr. Wahl** said he thinks it would be possible to received retribution for his losses with a lawsuit.

SEN. KEITH BALES asked if there was a definition of "genetically engineered" in the bill. **SEN. COBB** said that on page 2, lines 28-29, number 5, the definition is explained.

Closing by Sponsor:

SEN. COBB reiterated that SB 266 does not affect research in the state; it just sets a bond. He also said it's important for the companies to put up a bond because if contamination of genetically modified wheat is spread, the company needs to compensate farmers or producers, not tax payers. He again emphasized the major issue concerning SB 266 is customer choice versus science. He made it clear that customers rule in this situation and should be able to protect themselves. He is also confident that genetically modified wheat will not be developed soon so SB 266 is just added protection.

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. KEITH BALES, Chairman

JENNIFER STEPHENS, Secretary

KB/JS

EXHIBIT (ags25aad)